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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,013	08/05/2003	Gary Ashe	1584-3	7587
44190	7590	06/24/2005	EXAMINER	
WALTER W. DUFT LAW OFFICES OF WALTER W. DUFT 8616 MAIN ST SUITE 2 WILLIAMSVILLE, NY 14221			NGUYEN, TUAN N	
			ART UNIT	PAPER NUMBER
			3751	
DATE MAILED: 06/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/635,013

Applicant(s)

ASHE ET AL.

Examiner

Tuan N. Nguyen

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 8,9 and 11-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claim 1-7 and 10 have been considered but are moot in view of the new ground(s) of rejection as indicated below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bennett.

In regard to claims 1, 4 and 6, Bennett discloses a “disposable single-use” applicator assembly comprising a hermetically sealed package (see Fig. 2, cylinder 10 and the member about 12,18) containing a fluid (34) to be dispensed; the package comprising a flexible or non-flexible material that defines a fluid holding interior of the package; an applicator (see Fig. 4) for dispensing the fluid, the applicator has a handle (26) and a fluid holding element (32) at a first end portion of the handle; the fluid holding element being disposed in the package interior and surrounded by the package material (see Fig. 2), a hermetic closure of sonic welding between a first end portion of the package and an intermediate portion (where 26 is pointing) of said handle (see col. 3, line 2 et seq.); a second end portion of the handle having a “grip enhancing surface” and extending clear of the package; the package having a breakable portion (28)

proximate to the hermetic closure to allow the fluid holding element to be uncovered for use; and the breakable portion comprising a frangible seal formed in the package material that allows the package material to be broken. The introductory statement of intended use have been carefully considered but are deemed not to describe any structure patentably distinguishable over Bennett device, which is certainly capable of being used in the claim manner.

In regard to claim 5, the handle intermediate portion (where 26 is pointing) is defined by relatively flat first and second surfaces (left and right surfaces) and non-tapered sides (the opposite surface sides perpendicular to the left and right surfaces) that facilitate formation of the hermetic closure (see Figs. 1 and 2).

In regard to claim 10, the breakable portion (28) could be considered as a "strip seal" about handle 26 since no other structures in the claim defining what constitute "a strip seal."

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett in view of Nicholson.

Although the Bennett handle second end portion is not relatively thin in one dimension and relatively wide in another dimension and includes a for applying a name,

trademark or other identifier as claimed and although the applicator assembly of the Bennett reference does not include a hole or other opening in the handle second end portion, and a urethane foam material holding element as claimed, attention is directed to the Nicholson reference which discloses an analogous applicator assembly which further includes a handle (21) having a hole in a second end portion thereof (see Fig. 1), the handle second end portion is relatively thin in one dimension and relatively wide in another dimension (see Figs. 1 and 2) and includes a location (where numeral 21 is pointing) that is capable of being used to apply a name, trademark or other identifier, which is well-known in this art, and a holding element that can be made from a urethane foam material or bristle (see col. 3, line 64 et seq.).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Bennett handle, a handle having a shape and a hole as, for example, taught by Nicholson in order to hang the applicator for storage when not in use. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the bristle holding element (32) of Bennett with a urethane foam holding element as, for example, taught by Nicholson, where in so doing would involve mere substitution of one functional equivalent coating applicator means for another and the selection of any of these known equivalents to hold fluid therein and apply it to a surface would perform equally well on the Bennett device.

**Conclusion**


4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gueret discloses brushes with a bristles or foam applicator. Barton et al. discloses a brush with special grip construction.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TN

  
Tuan Nguyen  
Primary Examiner  
Art Unit 3751  
6/22/05